

SALE OF INTOXICATING LIQUORS.

AUSTIN, March 27, 1879.<sup>38</sup>

*To the Honorable House of Representatives in Legislature assembled:*

I respectfully return to your honorable body "An act to prohibit the sale, giving away, or otherwise disposing of, intoxicating liquors or medicated bitters or compounds producing intoxication, within five miles of the Southeast Texas Male and Female College, in Jasper county, and to provide a penalty for its violation," without my approval, together with my objections to its becoming a law.

It is contrary to the Constitution, being not within the constitutional power of the Legislature to pass such a bill.

By the twentieth section of the sixteenth article of the Constitution of 1876 it is provided that "the Legislature shall at its first session enact a law whereby the qualified voters of any county, justice's precinct, town or city by a majority vote from time to time may determine whether the sale of intoxicating liquor shall be prohibited within the prescribed limits." Such a law was passed by the Fifteenth Legislature (June 24, 1876, p. 26).

Thus, the power to prohibit the sale of intoxicating liquors in a particular locality, was remitted to the qualified voters in such civil divisions of the State, as in counties, justices' precincts, towns and cities under such regulations as have been prescribed, in pursuance to the mandate contained in this provision of the Constitution.

The object of the convention was to have this subject regulated by a general law, and to prevent the time of the Legislature from being consumed in the consideration and passage of local acts like this. It also exhibited a proper deference to the will of the qualified voters in any of the named civil divisions to be expressed in the ordinary way of expressing their will in such divisions in other elections. In a district or country not corresponding to one of those civil divisions there would be no regular mode of ascertaining the will of the qualified voters by the use of officers who hold elections generally.

These considerations induced the convention to radically change the mode previously in use of prohibiting the sale of intoxicating liquors in particular localities. Acts of this sort were passed under the Constitution of 1869, which provided that "the Legislature may prohibit the sale of all intoxicating or spirituous liquors in the immediate vicinity of any college or seminary of learning, provided said college or seminary be located other than at a county seat or at the State capital." (Article 12, section 48.)

This being omitted in the present Constitution and another mode of accomplishing the same or a similar object having been adopted, in the Constitution now in force, or any other mode than that therein prescribed, is prohibited.

This is in accordance with the ordinary rules of construction, as applicable both to constitutions and to laws. The same view was taken by the former Attorney General, H. H. Boone, in a clear and forcible opinion, in which he holds that the provision referred to in the Constitution of 1876 is exclusive in its nature, and takes away from the Legislature the power to pass such a local law as this bill provides for. There has been no adjudication in our courts of last resort to the contrary. I concur in that opinion.

O. M. ROBERTS, Governor.

<sup>38</sup>House Journal, 925-926.